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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

## JOHN FRANCIULLO, III,

**Plaintiff,**

CASE NO. 15cv2294 WQH (NLS)

## ORDER

CAROLYN W. COLVIN,

## Defendant.

14 || HAYES, Judge:

15 On October 14, 2015, Plaintiff initiated this action by filing a Complaint (ECF  
16 No. 1) and a motion to proceed in forma pauperis (ECF No. 2).

17 All parties instituting a civil action, suit, or proceeding in a district court of the  
18 United States, other than a petition for writ of habeas corpus, must pay a filing fee of  
19 \$400.00. *See* 28 U.S.C. § 1914(a); S.D. Cal. Civ. L.R. 4.5. An action may proceed  
20 despite a party's failure to pay only if the party is granted leave to proceed in forma  
21 pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177  
22 (9th Cir. 1999). "To proceed in forma pauperis is a privilege not a right." *Smart v.*  
23 *Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

24 In an affidavit, Plaintiff states that he earns approximately \$100 per week through  
25 his employment and receives no other form of income. (ECF No. 2 at 2). Plaintiff  
26 states that he has \$1,975.00 in his only bank account. *Id.* Plaintiff states that he does  
27 not own an automobile and does not own any real estate or other property of value. *Id.*  
28 at 2-3. Plaintiff states that he lives with his mother and father and does not pay rent.

1     *Id.* at 3. Plaintiff states that he uses the income from his part-time employment to pay  
2 for food, toiletries, clothing, and gasoline for the truck he borrows from his father. *Id.*

3                 After considering Plaintiff's motion and affidavit, the Court determines that  
4 Plaintiff cannot afford to pay the filing fee in this case and is eligible to proceed in  
5 forma pauperis pursuant to 28 U.S.C. § 1915(a).

6                 IT IS HEREBY ORDERED that Plaintiff's motion to proceed in forma pauperis  
7 is granted. (ECF No. 2).

8                 IT IS FURTHER ORDERED that all matters arising in this social security case  
9 are referred to the Honorable Nita L. Stormes, United States Magistrate Judge, pursuant  
10 to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c).

11 DATED: October 30, 2015

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13 **WILLIAM Q. HAYES**  
United States District Judge

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